

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY TODD EASTMAN,

Case No. 2:24-cv-01107-TLN-JDP (HC)

Petitioner,

ORDER

v.

GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA
PAUPERIS*

WARDEN,

ECF Nos. 6

Respondent.

FINDINGS AND RECOMMENDATIONS

THAT PETITIONER'S MOTION FOR A
RHINES STAY BE DENIED

ECF No. 7

FOURTEEN DAY DEADLINE FOR
OBJECTIONS

Petitioner, a state prisoner, brings this action under section 2254. ECF No. 1. The petition is deficient because, as he concedes in his subsequently filed motion for a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), it contains only unexhausted claims. ECF No. 7. The motion for stay is also deficient because a *Rhines* stay is available only for petitions that are "mixed" and contain both exhausted and unexhausted claims. See *Jones v. McDaniel*, 320 F.

1 App'x 784, 786 (9th Cir. 2009) ("A *Rhines* stay is only available for a mixed habeas petition
2 where at least some claims have been exhausted, and none of Jones' habeas claims were
3 exhausted."). Here, the motion for stay appears to refer to all claims in the petition and to
4 indicate a need to exhaust all of them. ECF No. 7 at 1-2. Accordingly, I recommend that
5 petitioner's motion for stay be denied. If these recommendations are adopted, I will order
6 plaintiff to indicate how he wishes to proceed. If the petition does, in fact, contain exhausted
7 claims, petitioner may state as much in his objections to these recommendations.

8 Accordingly, it is hereby ORDERED that petitioner's application to proceed *in forma*
9 *pauperis*, ECF No. 6, is GRANTED.

10 Further, it is RECOMMENDED that petitioner's motion to stay, ECF No. 7, be DENIED.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of
13 service of these findings and recommendations, any party may file written objections with the
14 court and serve a copy on all parties. Any such document should be captioned "Objections to
15 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed
16 within fourteen days of service of the objections. The parties are advised that failure to file
17 objections within the specified time may waive the right to appeal the District Court's order. *See*
18 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
19 1991).

20 IT IS SO ORDERED.
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22 Dated: October 3, 2024


23 JEREMY D. PETERSON
24 UNITED STATES MAGISTRATE JUDGE
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